



## APPLICATION FOR "COVENANT NOT TO SUE" ELIGIBILITY DETERMINATION PROSPECTIVE PURCHASER VERSION

The NH DES Brownfields Program provides a "Covenant not to Sue" to eligible persons under the provisions of RSA 147-F:6 and 7 as a means of facilitating the redevelopment of contaminated properties. To determine program eligibility, the following must be submitted with this application form (attach additional sheets as necessary to provide the requested information):

- Preliminary Environmental Assessment (must include a legal description of the property and history of past owners and operators);
- Proposed redevelopment and future property use description;
- If applicable, copy of outstanding environmental orders and a description of how substantial compliance with any outstanding order(s) will be achieved; and
- \$750 Application Fee.

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### Certification of Notice to Adjacent Property Owners and Municipality

In order to meet the requirements of Env-Or 803.05, the applicant certifies that on \_\_\_\_\_, 20\_\_\_\_, notice of the application was provided to owners of adjacent property and a complete copy of the application was provided to the Town/City of \_\_\_\_\_ (the municipality in which the property is located).

Date: \_\_\_\_\_ Applicant Signature: \_\_\_\_\_

Applicant Name (print or type): \_\_\_\_\_

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### I. Applicant Information

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Email.: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Contact's Telephone No.: \_\_\_\_\_ Email.: \_\_\_\_\_

If applicant is not an individual check applicable box:

- |  |   |
|--|---|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Corporation            |
| <input type="checkbox"/> Trust               | <input type="checkbox"/> Company                |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Partnership    |
| <input type="checkbox"/> Municipality        | <input type="checkbox"/> Other, describe: _____ |

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### II. Property Description

Property/Site Name: \_\_\_\_\_

DES and/or EPA Site #: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/Town: \_\_\_\_\_

Tax Map/Lot No.: \_\_\_\_\_

Property Owner Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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### III. BUSINESS INFORMATION

Check the appropriate answer to the right of the question and provide additional information on a separate sheet, as necessary.

- A. Provide names and addresses of all owners with 10% or more equity, partners, corporate officers and/or trustees, as applicable.
- B. Is the applicant a subsidiary, parent or affiliate of any other business organization? ☐ Yes ☐ No  
If yes, identify all affiliations.

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### IV. PROPERTY HISTORY AND PAST USE

Check the appropriate answer to the right of the question and provide additional information on a separate sheet, if necessary.

- A. Has the applicant ever been affiliated with current or past owners of the property and/or current or past operators of the facility? ☐ Yes ☐ No  
If yes, describe the affiliation.
- B. Other than activity performed in anticipation of participation in the Brownfields Program, has the applicant had any contact or involvement with the property in the past not disclosed in response to question IV.A.? ☐ Yes ☐ No  
If yes, describe the nature and extent of the contact or involvement.
- C. Has a compliance order been issued concerning the property under any state or federal environmental program? ☐ Yes ☐ No
- D. If an order has been issued, is the property in compliance with the order? ☐ Yes ☐ No ☐ NA  
If no, provide a detailed description of how participation in this program will bring the property into substantial compliance.
- E. Has petroleum contamination been discovered on the property? ☐ Yes ☐ No
- F. Is there an underground storage tank on the property? ☐ Yes ☐ No ☐ Unknown
- G. If yes to IV.E. and IV.F., has the property been determined ineligible for cleanup funds under RSA 146-D, Oil Discharge and Disposal Cleanup Fund? ☐ Yes ☐ No ☐ NA
- H. Is a bulk storage facility for fuel oil located on the property? ☐ Yes ☐ No
- I. If yes to IV.E. and IV.H., has the property been determined ineligible for cleanup funds under RSA 146-E, Fuel Oil Discharge Fund? ☐ Yes ☐ No ☐ NA
- J. Is there a motor oil storage facility on the property? ☐ Yes ☐ No
- K. If yes to IV.E. and IV.J., has the property been determined ineligible for cleanup funds under RSA 146-F, Motor Oil Discharge Cleanup Fund? ☐ Yes ☐ No ☐ NA
- L. If the property has been determined to be eligible for the above cleanup funds (RSA 146-D, RSA 146-E and RSA 146-F), describe the extent of potential contamination eligible for reimbursement under the cleanup funds versus the potential contamination that is ineligible for reimbursement.

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### V. APPLICANT INTEREST IN PROPERTY

Check all that apply.

- ☐ Prospective Purchaser  
☐ Current Mortgage Holder  
☐ Current Owner  
☐ Municipality with tax lien  
☐ Current lessee or tenant  
☐ Other, describe: \_\_\_\_\_
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## CERTIFICATION

I, the undersigned, being first duly sworn do attest upon my oath as follows:

- 1) \_\_\_\_\_ (the "Applicant") has accurately disclosed to the Department of Environmental Services all information known to it, or in its possession or control, which relates to responsibility for releases or threatened releases of hazardous wastes or materials at the property;
- 2) The information in this application, environmental site assessment report and all other documentation submitted in support of this application, is accurate and complete to the best of the Applicant's knowledge;
- 3) Neither the Applicant, nor any of its principals, owners, officers, directors, affiliates or subsidiaries:
  - a) currently holds or ever held, an ownership interest in the property or in any related fixtures or appurtenances;
  - b) caused or contributed directly or indirectly to any contamination or releases of hazardous wastes or materials at the property;
  - c) currently operates or controls, or ever operated or controlled a facility at the property for the storage, treatment or disposal of hazardous wastes or materials;
  - d) disposed of, or arranged for the disposal of hazardous wastes or materials at the property;
  - e) generated hazardous wastes or materials that were disposed of at the property.
- 4) The Applicant has obtained the concurrence of the property owner through (express consent) (implied consent by virtue of a mortgage or other agreement) or (the current owner or legal representative could not be located after a diligent search) [strike out inapplicable phrases];
- 5) The Applicant understands and acknowledges that the liability protections of the covenant not to sue and the statutory protection provided by RSA 147-F:7 will be forfeited if the applicant does not complete an approved remedial action plan and fails to complete site stabilization measures and that it may therefore be appropriate to establish a contingency fund for site stabilization;
- 6) The Applicant understands that the liability protections provided by the covenant not to sue and RSA 147-F:7 can be lost as a result of interference with the approved remedial action plan, violation of imposed use restrictions or noncompliance with program requirements as defined in RSA 147-F:16.

I am an authorized representative of the applicant and make the above statements based upon my personal knowledge and subject to all applicable penalties under RSA 147-F:18 III as well as applicable penalties for perjury and making false claims.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ appeared before me on behalf of \_\_\_\_\_ and subscribed to this certification under oath.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Public Seal

## DIRECTIONS FOR COMPLETING APPLICATION

### Required Submittals:

Preliminary Environmental Assessment: The preliminary environmental assessment report shall conform to DES requirements for an Initial Site Characterization (ref. Env-Or 605.08(c) and 605.09) or a Site Investigation (ref. Env-Or 606.01(b) and 606.03) or the procedures of the American Society of Testing and Materials (ASTM) E-1527-05, entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process". This report must include a legal description of the property and history of past owners and operators.

Redevelopment Plans: A description of the proposed redevelopment and future property use must be provided. A reduced size copy (11" X 17") of existing and proposed site layout plans should be provided, if available.

Orders: If applicable, a copy of any outstanding state or federal environmental orders, information on order compliance status and a description of how participation in this program will result in substantial compliance with outstanding order(s) should be submitted with this application form. Applicants are not eligible for the program, if participation in the program will not result in substantial compliance with outstanding order provisions.

\$750 Application Fee: The fee should be provided in the form of a check or money order payable to the "Treasurer, State of NH". State and local government including local school districts, counties and political subdivisions are exempt from paying the application fee.

### Schedule:

All applications will be reviewed within 10 days for completeness. A program eligibility determination will be made within 30 days of receipt of a complete application package.

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Send the completed package to:	NH DES/Waste Management Division Brownfields Program Coordinator P.O. Box 95, 29 Hazen Drive Concord, NH 03302-0095
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If you have any questions about the Brownfields Covenant Program, please contact DES at (603) 271-2908.

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*No liability is incurred by the State by reason of any approval for the Covenant Not To Sue Program. Approval by the New Hampshire DES is based on information supplied by the applicant. If inaccurate information is supplied, the "Covenant not to Sue" may be revoked and the applicant subject to civil or criminal penalties under RSA 147-F:18 III. No guarantee is intended or implied by reason of any advice given by the division or its staff.*